

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17<sup>th</sup> DAY OF MARCH, 2023

PRESENT

THE HON'BLE MR. JUSTICE B.VEERAPPA

AND

THE HON'BLE MRS. JUSTICE K.S.HEMALEKHA

WRIT APPEAL No.573/2022(GM-RES)

**BETWEEN:**

SRI. NANJAPPA,

...APPELLANT

(BY SRI ADITYA SONDHI, SENIOR COUNSEL A/W  
SRI MAHANTESH SHETTAR, ADVOCATE)

**AND:**

- 1 . STATE OF KARNATAKA,  
REPRESENTED BY ITS SECRETARY,  
REVENUE DEPARTMENT,  
M. S. BUILDING,  
DR. B. R. AMBEDKAR ROAD,  
BENGALURU-560001.
- 2 . MAINTENANCE TRIBUNAL AND  
THE ASSISTANT COMMISSIONER,  
TUMKURU SUB DIVISION, TUMKURU-572101.

3 . SRI M. B. NAGARAJU,

...RESPONDENTS

(BY SRI KIRAN KUMAR, HCGP FOR R1 & R2;  
SRI R.S. RAVI, SENIOR COUNSEL A/W  
SRI K. VIJAYA KUMAR, ADVOCATE FOR R3)

...

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961, PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 26.02.2019 PASSED IN WRIT PETITION No.52010/2016 PASSED BY THE LEARNED SINGLE JUDGE OF THIS COURT AND TO ALLOW THIS WRIT APPEAL WITH CONSEQUENTIAL RELIEF/S.

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, IS COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **B.VEERAPPA J.**, DELIVERED THE FOLLOWING:

### **J U D G M E N T**

The present Intra Court Appeal is filed by the appellant against the impugned order, dated 26.2.2019, passed in Writ Petition No.52010/2016 by the learned Single Judge of this Court allowing the writ petition filed by one Sri M.B. Nagaraju/respondent No.3 herein and quashing the order, dated 20.8.2016, passed by the Assistant Commissioner with an observation that the appellant

herein shall be at liberty to take recourse to such remedy as may be available to him under the law.

2. It is the case of the 3<sup>rd</sup> respondent, who is the petitioner before the learned Single Judge that he had purchased a property bearing Municipal Assessment No.3327/3081 measuring East to West 30 feet and North to South 50 feet situated at K.R.S. Agrahara, Ward No.22, Kunigal Town under a registered Sale Deed, dated 1.12.2006, in the name of the appellant/Nanjappa with a condition that the same has to be re-conveyed in his name (3<sup>rd</sup> respondent) and the entire sale consideration was paid by the 3<sup>rd</sup> respondent. Thereafter, the appellant/Nanjappa herein executed a registered Gift Deed, dated 23.2.2011, in favour of the 3<sup>rd</sup> respondent/M.B. Nagaraju in respect of the said property clearly mentioning in the Gift Deed that the entire sale consideration is paid by the 3<sup>rd</sup> respondent. Thereafter on 25.2.2016, the appellant/Nanjappa filed an application before the Assistant Commissioner for a declaration that the Gift Deed is null and void and in turn, the Assistant Commissioner by the order, dated 20.8.2016, allowed the application filed by the present

appellant/Nanjappa, who was the 3<sup>rd</sup> respondent before the learned Single Judge and cancelled the registered Gift Deed, dated 23.2.2011, with a direction to the Sub-Registrar, Anekal, to re-register the right in respect of the said property in favour of present appellant/Nanjappa, which was challenged by the 3<sup>rd</sup> respondent/M.B. Nagaraju by filing a writ petition i.e., W.P.No.52010/2016 before this Court for the relief sought for.

3. The learned Single Judge of this Court after hearing both parties and considering the material on record by the impugned order, dated 26<sup>th</sup> February, 2019 allowed the writ petition and quashed the order, dated 20<sup>th</sup> August, 2016 passed by the Assistant Commissioner holding that the Gift Deed, dated 23.2.2011, does not contain any such stipulation that the transferee shall maintain the Senior Citizen. However, it was observed that the present appellant/Nanjappa would be at liberty to take recourse to such remedy as may be available to him under the law. Hence, the present Intra Court Appeal is filed.

4. We have heard the learned Counsel for the parties to the  
lis.

5. Sri Aditya Sondhi, learned Senior Counsel for the appellant contended with vehemence that the impugned order passed by the learned Single Judge allowing the writ petition filed by the 3<sup>rd</sup> respondent cannot be sustained and hence, is liable to be set aside. He would further contend that the impugned order is neither correct nor maintainable on the ground that Sub-sections (1) and (2) of Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, hereinafter referred to as 'the Senior Citizens Act') are applicable to the facts and circumstances of the case. He would further contend that the learned Single Judge has failed to appreciate the fact that the 'Act' in question was framed with a view to provide maintenance and welfare of the parents and the senior citizen which is directly recognized and guaranteed under the Constitution of India and all matters incidental thereto. Further to ensure the life, the property of the senior citizens are protected and they are able to live with security and dignity. Thus the act recognises the vulnerable position of the senior citizen in the present society and intends to provide mechanism to avoid their suffering and to ensure that the life and property of the senior citizen are secured.

6. The learned Senior Counsel further contended that the definition of the words 'children', 'parent', 'relative', 'senior citizens' and 'welfare' under Section 2(a), (d), (g), (h) and (k) of the Senior Citizens Act includes children, son, daughter, grandson and granddaughter but does not include a minor, father or mother whether biological, adoptive or step-father or step-mother whether or not the father or the mother is a senior citizen, legal heir of the childless senior citizen, who is not a minor and is in possession of or would inherit his property after his death, any person being a citizen of India, who has attained the age of sixty years or above, are entitled for food, health care, recreation centres and other amenities necessary for the senior citizens which aspects are not considered by the learned Single Judge.

7. The learned Senior Counsel for the appellant would further contend that the learned Single Judge committed an error in law and on facts as Section 23(1) of the Act does not mandate, the requirement to provide basic amenities and basic physical needs in the Transfer Deed, should be in 'writing', but the learned Single Judge has proceeded to hold that the requirement to provide basic

amenities and basic physical needs in the Transfer Deed, should be expressly provided in the Transfer Deed. However, a perusal of Section 23(1) of the Senior Citizens Act does not stipulate any such condition and the order passed by the learned Single Judge is contrary to the earlier decisions of this Court, High Courts of Kerala, Punjab and Haryana and Madras. He would further contend that the condition of the requirements in the Transfer Deed to be in 'writing' mandated by the learned Single Judge of this Court infact, makes it an additional requirement which is not stipulated in Section 23(1) of the Senior Citizens Act. If the intention of the legislature was that the condition mentioned in Section 23 of the said Act ought to be in writing in the document of transfer, then it would have provided for the same expressly. He would further contend that any requirement to be in writing is contrary to the Section 23(1) and the object of the Act, as several parents/senior citizen/relatives, fall prey to the pretended emotions of their children and relatives, who prey on assets and properties, in their lifetime gift properties in favour of their children and relatives on the hope that they would be loved and taken care of during their sunset years. All these aspects of the matter have not been

considered by the learned Single Judge while passing the impugned order.

8. The learned Senior Counsel for the appellant would further contend that the requirement of writing in the transfer of Document mandated by the learned Single Judge is erroneous and as such, the impugned order defeats the object of Maintenance and Welfare of Parents and Senior Citizens Act which is a beneficial legislation which should be read and interpreted in favour of the senior citizens. Therefore, he sought to allow the writ appeal.

9. In support of his contentions, the learned Senior Counsel for the appellant relied upon the following decisions:

- i) *Commissioner of Income Tax -vs- Hindustan Bulk Carriers reported in (2003)3 SCC 57;*
- ii) *Smt. S. Vanitha -vs- Deputy Commissioner, Bengaluru Urban District and Others reported in AIR 2021 SC 177;*
- iii) *N.D. Vanamala -vs- State of Karnataka and Others, in Writ Appeal No.96/2019 (GM-RES) in Writ Petition*



*No.54488/2017 (DB) Decided on 29<sup>th</sup> June, 2022  
(ILR 2019 KAR 247;*

- iv) Prashanth Kumar and Another -vs- The Deputy Commissioner-cum-District Magistrate (Decided on 29.11.2019);*
- v) Smt. Raksha Devi -vs- Deputy Commissioner-cum-District Magistrate*
- vi) M. Shanmugam Pillai -vs- The District Collector and Others reported in*
- vii) Anrita Bhatia -vs- Balkeet Singh Bhatia reported in (2020 MPLJ 2)*
- viii) Subhashini -vs- District Collector and Others reported in 2020 SCC online Ker 4080*
- ix) M.V. Anitha -vs- P.V. Krishnamarar D.D.No. 7<sup>th</sup> October, 2021;*
- x) P.V. Krishnamarar -vs- M.V. Anitha in SLP No.20154/2021 D.D. 13.12.2021;*

- xi) Deepika Singh -vs- Central Administrative Tribunal and Others reported in 2022 SCC Online SC 1088; and*
- xii) The ESI Corporation -vs- M/s. Radhika Theatre reported in 2022 Live Law (SC) 53.*

10. Per contra, Sri R.S. Ravi, learned Senior Counsel for the respondent No.3 while justifying the impugned order passed by the learned Single Judge of this Court contended that as per Sub-Section (1) of Section 23 of the Senior Citizens Act, two conditions must be fulfilled i.e., the transfer must have been made subject to condition that the transferee shall provide basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs to the transferor and if both the conditions are satisfied, by a legal fiction, the transfer shall be deemed to have been made by fraud or coercion or under undue influence. Such a transfer then becomes voidable at the instance of the transferor and the Maintenance Tribunal gets jurisdiction to declare the transfer as void.

11. The learned Senior Counsel for respondent No.3 would further contend that in the Gift Deed, there is no stipulation mentioned with regard to maintenance of the transferor by the transferee. Section 122 of the Transfer of Property Act is not applicable in view of the overriding effect of the provisions of Section 3 of the Senior Citizens Act. Thereby, he submits that the impugned order passed by the learned Single Judge is just and proper and does not call for any interference of the order in exercise of powers in the Intra-Court Appeal.

12. In support of his contentions, he relied upon the following dictums:

- i) *Sudesh Chhikara -vs- Ramti Dev and Another reported in LAWS (SC)-2022-12-17 particularly paragraph-12 ;*
- ii) *Full Bench decision of the Kerala High Court in the case of Subhashini -vs- District Collector, Kozhikode reported in LAWS (SC) 2022-9-81; and*
- iii) *N.D. Vanamala -vs- State of Karnataka and Others reported in AIR 2019 Kar. 247.*

13. In view of the aforesaid rival contentions urged by the learned Counsel for the parties, the only point that would arise for our consideration in the present Intra Court Appeal is:

*"Whether the appellant has made out a case to set aside the impugned order passed by the learned Single Judge of this Court allowing the writ petition filed by the 3<sup>rd</sup> respondent in view of the provisions of Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 in the peculiar facts and circumstances of the present case?"*

14. We have given our anxious consideration to the arguments advanced by the learned Counsel for the parties and perused the entire material available on record carefully.

15. It is an undisputed fact that the 3<sup>rd</sup> respondent purchased the property bearing Municipal Assessment No.3327/3081 measuring East to West 30 ft. and North to South 50 ft., situated at K.R.S. Agrahara, Ward No.22, Kunigal Town in the name of the appellant under the registered Sale Deed, dated 1.12.2006, and the entire sale consideration was paid by the 3<sup>rd</sup>

respondent as mentioned in the Gift Deed. It is also not in dispute that the appellant executed a registered Gift Deed on 23.2.2011 in favour of the 3<sup>rd</sup> respondent in respect of the said property without stipulating any condition in the Gift Deed.

16. It is also not in dispute that the appellant had filed an application before the Assistant Commissioner on 25.2.2015 and the Assistant Commissioner, by the order dated 20.8.2016 allowed the application filed under Section 23(1) and (2) of the Senior Citizens Act with a direction to the authorities concerned to reinstate the right in respect of said site in favour of the present appellant.

17. At this stage, it is relevant to consider the provisions of Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Protection Act, 2007. which reads as under:

*"23. Transfer of property to be void in certain circumstances.—*

*(1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his*

*property, subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.*

*(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.*

*(3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5."*

18. On careful reading of the aforesaid provisions makes it clear that all kinds of transfers as is clear from the use of the expression '*by way of gift or otherwise*' so as to attract the provisions of Sub-section (1) of Section 23 of the Senior Citizens Act, the following two conditions must be fulfilled.

a) *The transfer must have been made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor; and*

b) *The transferee refuses or fails to provide such amenities and physical needs to the transferor.*

19. If both the aforesaid conditions are satisfied, by a legal fiction, the transfer shall be deemed to have been made by fraud or coercion or undue influence. Such a transfer then becomes voidable at the instance of the transferor and the Maintenance Tribunal gets jurisdiction to declare the transfer as void.

20. Though a specific contention is urged by the learned Senior Counsel for the appellant that in view of the scope and object of the Senior Citizens Act, it is deemed that *the transferee*

*shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property made by him would be null and void,* it is an undisputed fact that when a senior citizen parts with his or her property by executing a gift or a release or otherwise in favour of his or her near and dear ones, a condition of looking after the senior citizen is not necessarily attached to it. On the contrary, very often, such transfers are made out of love and affection without any expectation in return. Therefore, when it is alleged that the conditions mentioned in Sub-section (1) of Section 23 of the Senior Citizens Act are attached to a transfer, existence of such conditions must be established before the Tribunal.

21. In the present case, on careful perusal of the document executed by the appellant in favour of the 3<sup>rd</sup> respondent, who happens to be the brother of the appellant, it does not contain any stipulation that the 3<sup>rd</sup> respondent is under the obligation to maintain the present appellant. In the absence of the same and in view of the provisions of Sub-sections (1) and (2) of Section 23 of



the Senior Citizens Act, the transaction could be declared as null and void provided the same contains the stipulation that the transferee shall maintain the senior citizen and the aforesaid Gift Deed does not contain any such stipulation. In the absence of any condition stipulated in the documents, the provisions of Sub-sections (1) and (2) of Section 23 of the Senior Citizens Act are not attracted.

22. Our view is fortified by the dictum of the Hon'ble Supreme Court in the case of ***Sudesh Chhikara -vs- Ramti Devi reported in LAWS (SC) 2022-12-17*** wherein at paragraphs-12, 13 and 14 it is held as under:

*"12. Sub-section (1) of Section 23 covers all kinds of transfers as is clear from the use of the expression "by way of gift or otherwise". For attracting sub-section (1) of Section 23, the following two conditions must be fulfilled:*

- a. The transfer must have been made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor; and*

*b. The transferee refuses or fails to provide such amenities and physical needs to the transferor.*

*If both the aforesaid conditions are satisfied, by a legal fiction, the transfer shall be deemed to have been made by fraud or coercion or undue influence. Such a transfer then becomes voidable at the instance of the transferor and the Maintenance Tribunal gets jurisdiction to declare the transfer as void.*

*13. When a senior citizen parts with his or her property by executing a gift or a release or otherwise in favour of his or her near and dear ones, a condition of looking after the senior citizen is not necessarily attached to it. On the contrary, very often, such transfers are made out of love and affection without any expectation in return. Therefore, when it is alleged that the conditions mentioned in sub-section (1) of Section 23 are attached to a transfer, existence of such conditions must be established before the Tribunal.*

*14. Careful perusal of the petition under Section 23 filed by respondent no. 1 shows that it is not even pleaded that the release*

*deed was executed subject to a condition that the transferees (the daughters of respondent no. 1) would provide the basic amenities and basic physical needs to respondent no. 1. Even in the impugned order dated 22<sup>nd</sup> May 2018 passed by the Maintenance Tribunal, no such finding has been recorded. It seems that oral evidence was not adduced by the parties. As can be seen from the impugned judgment of the Tribunal, immediately after a reply was filed by the appellant that the petition was fixed for arguments. Effecting transfer subject to a condition of providing the basic amenities and basic physical needs to the transferor - senior citizen is sine qua non for applicability of sub-section (1) of Section 23. In the present case, as stated earlier, it is not even pleaded by respondent no. 1 that the release deed was executed subject to such a condition."*

23. Though in the present case, a specific contention is being taken by the learned Senior Counsel for the appellant that, the appellant being the absolute owner of the property in question, out of love and affection executed a Gift in favour of his brother/respondent No.3 under a Gift Deed, dated 23.2.2012, with

a ray of hope that the 3<sup>rd</sup> respondent/brother would take care of basic needs of medical necessities as his son was not keeping well and his daughter was settled with her husband, but respondent No.3 has changed attitude towards him and has failed to show even love and affection towards him. The fact remains that, on the application filed by the appellant against respondent No.3, the Assistant Commissioner, who is the authority under the provisions of Sub-sections (1) and (2) of Section 23 of the Senior Citizens Act has allowed the application filed by the present appellant ignoring the conditions stipulated under the provisions of Sub-sections (1) and (2) of the Senior Citizens Act as held by the Hon'ble Supreme Court. Thereby, the learned Single Judge has rightly allowed the writ petition. In identical circumstances, the Full Bench of the Kerala High Court in the case of ***Subhashini -vs- District Collector, Kozhikode reported in LAWS (KER)-2020-9-81*** at paragraph-52 has held as under:

*"52. We conclude by answering the reference, that the condition as required under Section 23(1) for provision of basic amenities and basic physical needs to a senior citizen has to be expressly*

*stated in the document of transfer, which transfer can only be one by way of gift or which partakes the character of gift or a similar gratuitous transfer. It is the jurisdictional fact, which the Tribunal will have to look into before invoking Section 23(1) and proceeding on a summary enquiry. We answer the reference agreeing with the decision in W.A. No. 2012 of 2012 dated 28.11.2012 [Malukutty Ponnarassery v. P. Rajan Ponnarassery]. We find Shabeen Martin v. Muriel [2016 (5) KHC 603] and Sundhari v. Revenue Divisional Officer [2018 KHC 4655 = (2013) 3 KLT 1082] to be wrongly decided. We approve Radhamani v. State of Kerala [2016 (1) KHC 9] which had a recital in the document akin to that required under Section 23(1)."*

24. On careful reading of the contents of the Gift Deed, dated 23.2.2012, the impugned order passed by the learned Single Judge of this Court is in consonance with the provisions of Sub-sections (1) and (2) of Section 23 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, as the Gift Deed, dated 23.2.2011, does not contain any stipulation that respondent No.3 is under obligation to maintain the present appellant. In the absence of the

same, it cannot be held that the impugned order passed by the learned Single Judge is not in consonance with the provisions of Section 23 of the Senior Citizens Act.

25. Though our conscious is in favour of the welfare of the Senior Citizens considering the scope and object of Maintenance and Welfare of Parents and Senior Citizens Act, 2007, but our hands are tied in view of the dictum of the Hon'ble Supreme Court in the case of *Sudesh Chhikara*, wherein while interpreting the very provisions of Sub-section (1) of Section 23 of the said Act, it has been held that the two conditions must be stipulated in the document, which is binding on all including this Court as contemplated under Article 141 of the Constitution of India.

26. The judgments relied upon by the learned Senior Counsel for the appellant are not applicable to the peculiar facts and circumstances of the present case, in view of the latest dictum of the Hon'ble Supreme Court rendered on 6<sup>th</sup> December 2022 in the case of ***Sudesh Chhikara -vs- Ramthi Devi reported in LAWS(SC) 2022-12-17.***

27. For the reasons stated above, the point raised in the present Intra Court Appeal is answered in the negative holding that the appellant has not made out any ground to interfere with the impugned order, dated 26.2.2019, passed by the learned Single Judge in Writ Petition No.52010/2016.

28. In view of the above, we pass the following:

ORDER

- i) This Intra Court Appeal is hereby dismissed as being devoid of any merit;
- ii) The impugned order, dated 26<sup>th</sup> February, 2019 passed in Writ Petition No.52010/2016 by the learned Single Judge of this Court is confirmed.

**Sd/-  
Judge**

**Sd/-  
Judge**

Nsu/-